

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

DOROTHY S. McCARTHY
GARY K. ANDERSON
MARC H. ANDERSON
LEE G. ANDERSON
BONNIE M. ANDERSON

Claim No. CU-0697

Decision No. CU 6244

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended, was presented by DOROTHY S. McCARTHY in behalf of herself and her four children in the amount of \$1,612,309.21 based upon asserted losses in connection with ownership of stock in several nationalized Cuban corporations, real and personal property and the death of Howard F. Anderson. Claimants have been nationals of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claim is asserted for the following losses:

Real Property	\$ 234,002.54
Personal Property and Equipment	115,525.88
Securities	373,918.50
Charges on Property	53,662.29
Death of Howard F. Anderson	<u>835,200.00</u>
Total	\$1,612,309.21

The evidence includes reports from abroad, affidavits of individuals personally acquainted with claimants and having knowledge of the property concerned, records filed with the Department of State, decrees of the Government of Cuba, insurance policy, records of the trial of Howard F. Anderson, and stock certificates. On the basis of the record, the Commission finds that DOROTHY S. McCARTHY and Howard F. Anderson, her husband at the time of loss, were the owners, in equal shares, of the property included in this claim, which was subject to the Cuban laws relating to community property. As a result of the trial of Howard Anderson, which will be discussed further, all of the property in which he had an interest and which had not been previously taken by the Government of Cuba was decreed to be confiscated by the Cuban Government. Since the court decision was issued on April 18, 1961, the Commission finds those properties taken by the Government of Cuba on that date.

The items of real property, some of the personal property and equipment, and the amount claimed as a charge on property are assets of the Stauber-Anderson Lubricaciones, S.A. and are discussed with relation to the value of that enterprise on the date of loss.

Personal Property

The items of personal property for which claim is made and which belonged to DOROTHY S. McCARTHY and Howard F. Anderson individually were:

Furniture, household effects and jewelry	\$ 7,910.00
1960 Buick Model 411	4,500.00
1957 Cadillac Fleetwood	5,000.00
Bank Accounts	<u>17,963.46</u>
Total	\$35,373.46

In support of the value claimed, the record contains a copy of an insurance policy covering personal property to the value of \$18,000.00 with an attached appraisal of the jewelry and the July 7, 1960 report of property filed by Howard Anderson with the American Embassy in Havana. Claimant DOROTHY S. McCARTHY has filed a claim for only \$7,910.00 for the household furnishings and jewelry in her statement in which she explained that some of the jewelry and other personalty was removed prior to the taking of the residence by Cuba. Although claimant asserted that the 1960 Buick was purchased in February, 1961, it was listed by her husband in the July 7, 1960 report so it presumably was purchased in February, 1960. There is no later record of the bank balances and since claimant left Cuba to reside in Florida, it would appear that no appreciable change would have occurred in the amounts left on deposit. On the basis of the evidence of record, the Commission finds the amounts claimed to be fair and reasonable with the exception of the values claimed for the automobiles which had depreciated in value so that the Commission finds the values on April 18, 1961 to have been \$3,300.00 for the 1960 Buick and \$2,800.00 for the 1957 Cadillac Fleetwood.

The Commission concludes that DOROTHY S. McCARTHY and Howard F. Anderson suffered a loss in the amount of \$31,973.46 for the personal property taken by the Government of Cuba on April 18, 1961.

Securities

Claimant DOROTHY S. McCARTHY and Howard Anderson had investments which were owned in equal shares as follows:

1. Stauber-Anderson Lubricaciones, S.A.	all shares
2. Distribuidores Willys, S.A.	874 shares
3. Sociedad Inmobiliaria Raritan	92 shares
4. Piezas y Accesorios, K-W, S.A.	225 shares

1. Stauber-Anderson Lubricaciones, S.A.

The evidence of record establishes that the entire capital stock of this Cuban enterprise was owned in equal shares by DOROTHY S. McCARTHY and Howard F. Anderson. The corporation owned real property located in Havana at Linea y 2d, Miramar; 5a Avenue between 120 y 146 Playa; and Calle 180, No. 1315, Biltmore. The real property at 14 Marina, Havana, was leased by the Cuban corporation.

In support of the values claimed for the real property, the record contains a copy of a report filed with the American Embassy in Cuba on July 7, 1960, affidavits of William A. Powe, Fernando Ovies, William Bryant and Enrique Jova (claimant's attorney in Cuba), and investigative reports from abroad.

According to the evidence, the leased property at 14 Marina, Havana, had been improved by the Stauber-Anderson firm with the conversion of a residential property into a service station having six bays at a cost of \$5,463.31. At Calle Linea and 2d, Miramar near the tunnel under the Almendares River, the Stauber-Anderson Lubricaciones owned a lot with a frontage on Linea of approximately 300 feet and a depth of 150 feet on which a building was erected in 1956. The building had two stories with lockers and warehouse space on the second floor and a waiting room, offices and baths downstairs. Adjoining this were four lubrication bays and a steam cleaning room. The cost of the land and improvements were declared to have been \$85,297.67.

The third service station owned by Stauber-Anderson was located at Quinta (5a) Avenue between 120 and 146 Streets, Playa Miramar, Havana, opposite the Havana Yacht Club. This property was purchased in 1957 or 1958 and remodelling of the buildings was carried out so that, when the property was taken by the Cuban Government, the building contained an air-conditioned waiting room, office storage space, and three lubrication bays. The purchase price of the property was stated to have been \$78,213.83 and the cost of remodelling was \$17,327.73 for a total of \$95,541.56. The family residence owned by Stauber-Anderson was located at Calle 180, No. 1315, Biltmore, Havana near the University of Villanova. The building and lot were purchased in 1957 for \$47,000.00 and an additional \$700.00 was paid for additional costs for improvements to the building.

On the basis of the entire record, the Commission finds that the fair and reasonable value of the real property belonging to Stauber-Anderson Lubricaciones, S.A. which was taken on April 18, 1961 was \$234,002.54.

The remaining assets of Stauber-Anderson consisted of lubrication and service equipment, office equipment, accounts receivable and inventories. On

July 7, 1960, these assets were valued at \$42,290.69, \$6,761.73, \$53,662.29 and between \$25,000.00 and \$30,000.00 for inventories. On the basis of the entire record, the Commission finds that the value of the inventories on April 18, 1961 was \$25,000.00 and the values of the other assets as declared were fair and reasonable. Therefore the total value of these items on the date of loss amounted to \$127,714.71 and the Commission concludes that the total value of Stauber-Anderson Lubricaciones, S.A. on April 18, 1961 was \$361,717.25.

Claimants have asserted an additional value of \$196,500.00 for the 1,965 shares of stock of Stauber-Anderson which were issued at \$100.00 per share. The only assets of the corporation were as described previously and the value of the corporation is determined to have been \$361,717.25.

2. Distribuidores Willys, S.A.
3. Sociedad Inmobiliaria Raritan
4. Piezas y Accesorios, K-W, S.A.

In the Claim of William A. Powe, Claim No. CU-0502 (which is incorporated herein by reference), the Commission found that Distribuidores Willys, S.A., Sociedad Inmobiliaria Raritan, and Piezas y Accesorios, K-W, S.A. were nationalized by the Government of Cuba on October 24, 1960, September 13, 1961, and October 24, 1960, respectively. The Commission further held that this type of claim is compensable to an American national under the facts and conditions set forth therein. The value of a share of stock in Distribuidores Willys, S.A. was determined to be worth \$128.44 per share plus \$10.00 per share for unpaid dividends, Sociedad Inmobiliaria Raritan worth \$420.603 per share and Piezas y Accesorios, K-W, S.A. was worth \$126.73 per share plus \$10.00 per share for unpaid dividends. The Commission therefore finds that DOROTHY S. McCARTHY and Howard F. Anderson or his heirs suffered the following losses for the above stock interests:

Distribuidores Willys, S.A., 874 shares on October 24, 1960	\$120,996.56
Sociedad Inmobiliaria Raritan, 92 shares on September 13, 1961	38,695.48
Piezas y Accesorios, K-W, S.A., 225 shares on October 24, 1960	30,764.25

The losses sustained by DOROTHY S. McCARTHY and Howard F. Anderson are summarized as follows:

<u>Item</u>	<u>Date</u>	<u>Amount</u>
Personal Property	April 18, 1961	\$ 31,973.46
Stauber-Anderson Lubricaciones Distribuidores Willys, S.A.	April 18, 1961	361,717.25
Sociedad Inmobiliaria Raritan	October 24, 1960	120,996.56
Piezas y Accesorios, K-W, S.A.	September 13, 1961	38,695.48
	October 24, 1960	<u>30,764.25</u>
	Total	\$584,147.00

Under the laws of Cuba, DOROTHY S. McCARTHY owned one-half the claimed property and inherited a life estate in one-fifth of her husband's property, each child inheriting one-fifth of his father's property plus one-fourth of the remainder interest in the one-fifth subject to the mother's life estate. According to the evidence of record DOROTHY S. McCARTHY was 38 years old at the time of her husband's death on April 19, 1961, and the value of her life estate must be determined to properly evaluate the interests of all claimants in the property claimed.

The Commission has adopted as a basis for valuation of life and remainder interests the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3 1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-7.) According to that method of evaluation, a life estate in property so encumbered is valued at .64867 of the estate, and the remainder interest is valued at .35133. Therefore since the value of Howard F. Anderson's estate is \$292,073.50 (one-half of \$584,147.00), one-fifth of that is \$58,414.70 and a life interest in one-fifth is \$37,891.86. The remainder interest shared by each of the four children amounts to \$20,522.84 or \$5,130.71 each.

The Commission thus finds that claimants sustained losses or succeeded to losses in the following amounts:

DOROTHY S. McCARTHY	\$329,965.36
GARY K. ANDERSON	63,545.41
MARC H. ANDERSON	63,545.41
LEE G. ANDERSON	63,545.41
BONNIE M. ANDERSON	63,545.41

Death Claim

Claim is made also for the death of Howard F. Anderson, former husband of DOROTHY S. McCARTHY and father of the other claimants, because of his execution by the Government of Cuba on April 19, 1961. The evidence of record concerning the trial and execution of Howard Anderson includes a copy of the charges, the statement and findings of the trial court, the decision of the appeals court, a report to the Department of State by a United States representative, a copy of the deceased's statement and a copy of the death certificate.

Section 503(b) of the Act provides:

The Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims of nationals of the United States against the Government of Cuba . . . arising since January 1, 1959 . . . for disability or death resulting from actions taken by or under the authority of the Government of Cuba . . .

According to the record, Mr. Anderson was arrested by Cuban officials on March 16, 1961. Information concerning the arrest was withheld for a time and on April 14, 1961 formal charges were made against Mr. Anderson and several Cubans accusing them of crimes against the State. The public trial was held on April 17, 1961 (the day of the Bay of Pigs landing) and lasted until 12:45 A.M. of the 18th. On the afternoon of the 18th the verdict was announced finding the defendants guilty of crimes against the State as defined and punished in paragraph 3, Article 157, and Article 148 of the Code of Public Defense of Cuba, as amended by Law 425 of 1959. Five of the defendants, including Mr. Anderson were sentenced to death. The appeal from this decision was heard that night and the decision was affirmed. The appeals court, however, stated in its decision that the legal determination by the lower military court was erroneous and defective since the acts in question did not constitute the

crime against the State referred to in paragraph 3, Article 157 and Article 148, as charged, but crime against the State according to Article 148. The decision was confirmed though and a warning given to the officer who prepared the opinion not to repeat the same mistake.

On the basis of the entire record which reveals the lack of opportunity for defense attorneys to prepare arguments for the trial and subsequent appeal, the actions of the prosecutor at the trial, the changing of the crime charged by the appeals court, the inconsequential acts of Mr. Anderson who was not a member of any group acting against the Cuban Government, and the animosity toward Americans resulting from the Bay of Pigs, the Commission finds that there was a denial of justice by the Government of Cuba in violation of international law. Thus the Government of Cuba is held accountable within the scope of Title V of the International Claims Settlement Act of 1949, as amended. (See Claim of Jennie M. Fuller et al., Claim No. CU-2803.)

Claimants have asserted a loss in the amount of \$835,200.00 for the death of Mr. Anderson based upon a yearly income of \$28,800.00 and a life expectancy of 29 years since he was 41 years old on the date of his execution. The yearly income multiplied by the life expectancy equals the amount claimed, the total income expected to have been earned by the deceased. But the Commission is empowered to certify the losses to claimants resulting from the death of Howard Anderson which losses have been held to the expected contributions to claimants from the deceased. (See Fuller et al., supra.)

It is evident from the record that the deceased as General Manager of Stauber-Anderson Lubricaciones, S.A. had developed a substantial business with the main growth occurring in the middle fifties when the real properties involved in this claim were purchased. At the time of his death, he left surviving his wife DOROTHY S. McCARTHY, and his children, GARY K. ANDERSON, age 15 years; MARC H. ANDERSON, age 11; LEE GAIL ANDERSON, age 8; and BONNIE MARIE ANDERSON, age 5, all of whom were dependent on the deceased for support. The Commission has considered the average income of Howard Anderson and his life expectancy and finds that the expected contributions yearly to his family

would amount to \$18,000.00 or \$3,000.00 for each. The total amounts which would have accrued to the children from the time of their father's death until they became twenty-one years old were for GARY - \$18,000.00; MARC - \$30,000.00; LEE GAIL - \$39,000.00; and BONNIE MARIE - \$48,000.00. The remainder accruing to the widow for 32 years, the life expectancy of her husband, is \$345,000.00. Accordingly, the Commission concludes that claimants suffered losses in these amounts as a result of the actions of the Government of Cuba in the execution of Howard F. Anderson on April 19, 1961, within the meaning of Title V of the Act.

Recapitulation

The losses and date thereof which occurred within the scope of Title V of the Act are summarized below:

DOROTHY S. McCARTHY	October 24, 1960	\$ 85,724.68
	April 18, 1961	222,382.88
	April 19, 1961	345,000.00
	September 13, 1961	<u>21,857.80</u>
		\$674,965.36
GARY K. ANDERSON	October 24, 1960	\$ 7,556.06
	April 18, 1961	42,826.95
	April 19, 1961	18,000.00
	September 13, 1961	<u>13,162.40</u>
		\$81,545.41
MARC H. ANDERSON	October 24, 1960	\$ 7,556.06
	April 18, 1961	42,826.95
	April 19, 1961	30,000.00
	September 13, 1961	<u>13,162.40</u>
		\$93,545.41
LEE GAIL ANDERSON	October 24, 1960	\$ 7,556.06
	April 18, 1961	42,826.95
	April 19, 1961	39,000.00
	September 13, 1961	<u>13,162.40</u>
		\$102,545.41
BONNIE MARIE ANDERSON	October 24, 1960	7,556.06
	April 18, 1961	42,826.95
	April 19, 1961	48,000.00
	September 13, 1961	<u>13,162.40</u>
		\$111,545.41

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum

from the dates of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644) and in the instant claim it is so ordered for the amounts and from the dates stated above.

CERTIFICATIONS OF LOSS

The Commission certifies that DOROTHY S. McCARTHY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Six Hundred Seventy-Four Thousand Nine Hundred Sixty-Five Dollars and Thirty-Six Cents (\$674,965.36) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that GARY K. ANDERSON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eighty-One Thousand Five Hundred Forty-Five Dollars and Forty-One Cents (\$81,545.41) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

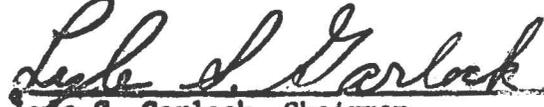
The Commission certifies that MARC H. ANDERSON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Ninety-Three Thousand Five Hundred Forty-Five Dollars and Forty-One Cents (\$93,545.41) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that LEE GAIL ANDERSON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Two Thousand Five Hundred Forty-Five Dollars and Forty-One Cents (\$102,545.41) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that BONNIE MARIE ANDERSON suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Eleven Thousand Five Hundred Forty-Five Dollars and Forty-One Cents (\$111,545.41) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

JUN 23 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)

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